

IN THE COURT OF APPEALS OF IOWA

No. 0-696 / 10-1282
Filed October 6, 2010

**IN THE INTEREST OF T.P., T.P., and
T.P., III,
Minor Children,**

**M.P., Mother,
Appellant.**

Appeal from the Iowa District Court for Pottawattamie County, Charles D. Fagen, District Associate Judge.

A mother appeals the termination of her parental rights to her three children. **AFFIRMED.**

Roberta Megal, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for appellee.

Phil Caniglia, Council Bluffs, for father.

Sara Thalman, Council Bluffs, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

A mother appeals the termination of her parental rights to her three children. At the time of the termination order, her daughter, Ti.P., was three years old; her daughter, To.P., was seven years old; and her son, T.P. III, was eight years old.¹ The Department of Human Services (DHS) removed these children from their home in September of 2008 because they witnessed violent confrontations between their mother, M.P., and her paramour, T.J.P. The mother also battled substance abuse and mental health issues that the juvenile court found unresolved at the time of the termination hearings. In our de novo review, we conclude the State offered clear and convincing evidence to support the termination ruling.

I. Background Facts and Proceedings

The DHS involvement with M.P.'s children can be traced to September 15, 2008, when they witnessed a fight in which their mother hit T.J.P in the head, causing a gash that required stitches. The older children reported to school authorities that both parents used knives to destroy property and their little sister, Ti.P., was kicked during the domestic violence incident. The parents were involved in another serious altercation in October 2008, involving allegations that T.J.P. sexually assaulted M.P., that she fell or was pushed through a glass window, and that M.P. set fire to the house. Authorities charged M.P. with

¹ Ti.P.'s father is B.H. The father of the older children is the mother's long-time paramour, T.J.P. The court terminated the parental rights of the mother and both fathers, but neither father is appealing.

multiple offenses. She eventually pleaded guilty to arson and received a twenty-five-year suspended sentence.

The juvenile court adjudicated the children in need of assistance (CINA) on November 12, 2008. The court placed the children in family foster care, where they stayed for the next twenty months leading up to the termination hearings. The court directed M.P. to complete a women's non-violence program, substance abuse evaluations and treatment, and random drug screens. The parents were allowed supervised visits with the children at the discretion of the DHS, but were prohibited from having joint visits.

On July 9, 2009, police conducted a search at T.J.P.'s residence and arrested M.P. and T.J.P., who were together in the bedroom when police arrived. Authorities charged T.J.P. with drug offenses and found M.P. in violation of her probation. In September 2009, M.P. started serving time at the residential correctional facility (RCF).

On November 23, 2009, the State filed a petition seeking to terminate M.P.'s parental rights. The petition alleged that termination was proper under Iowa Code sections 232.116(1)(d), (e), (f), (h), and (l) (2009).

The court scheduled a hearing on the petition for January 6, 2010, but continued the proceeding for several months upon request of the DHS. The DHS case manager believed M.P. was progressing well with services offered her while in the RCF and the case manager anticipated that M.P. could be reunited with her children as soon after her release as she could obtain suitable housing. The RCF released M.P. on January 8, 2010. By January 11, 2010, she was back in

custody for violating the daily reporting requirements. M.P.'s violation involved consuming alcohol and seeking a sexual encounter via text messages with a man staying at a federal halfway house. M.P. admitted lying to her probation officer and the DHS about her conduct. M.P. remained at the RCF until April 22, 2010.

The juvenile court heard evidence on the termination petition on April 26, 2010; May 27, 2010; and June 8, 2010. On July 27, 2010, the court terminated the rights of the mother on all grounds alleged by the State. M.P. appeals from that order.

II. Standard of Review

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). While we give weight to the factual determinations of the juvenile court, we are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Analysis

The mother contends that the grounds for adjudicating the children as CINA no longer exist because the lengthy federal prison sentence being served by T.J.P. removes any threat of ongoing domestic violence. See Iowa Code § 232.116(1)(d). But the juvenile court recognized a continuing concern: “[M.P.] has gone from one highly toxic relationship with [T.J.P.] to questionable relationships with other men.” M.P. welcomed a sexual liaison with a halfway house resident immediately after being released from the RCF in January 2010 and lied to authorities about her whereabouts, all at a time when the termination petition was pending. As recently as the spring of 2010, she allowed her children

to receive rides from acquaintances who were not screened or authorized by the DHS to have contact with the children.

M.P. alleges that she has been drug-free for more than a year. She concedes, however, that her sobriety did not include abstaining from alcohol. M.P.'s mother believed that M.P. got drunk after being released from the RCF in January 2010. The record also indicates that M.P. was a "no-show" for providing urinalyses on May 27, 2009; June 9, 2009; August 13, 2009; and January 5, 2010—casting doubt on the accuracy of her claim to be drug-free for more than one year.

We concur with the juvenile court's determination that substance abuse, co-dependency, and impulse control issues continue to be obstacles to reuniting M.P. with her children. The DHS has provided M.P. with a host of services to correct those circumstances, but they continued to exist through the spring and summer of 2010. Termination was proper under section 232.116(1)(d). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (holding where juvenile court terminates on more than one ground, we need only find sufficient grounds under one of the statutory sections cited in the termination ruling).

We also agree with the juvenile court's conclusion that the State presented clear and convincing evidence that the children could not be returned to their mother's custody at the time of the termination hearings. See Iowa Code § 232.116(1)(f), (h). While M.P. did well in the structured setting of the RCF, she regressed when the oversight was removed. The DHS case worker described M.P. as being on a "roller coaster for 20 months"—making upward progress

when she was dedicated to change, but dipping down when she made bad decisions. That kind of fluctuation in addressing her personal challenges does not bode well for long-term, stable parenting of her children. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (“Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.”).

M.P. was staying with her mother and younger brother in Omaha after leaving the RCF for the second time. As of the last installment of the termination hearing on June 8, 2010, she had yet to find suitable, independent housing. She acknowledged that in the absence of an approved home study the juvenile court could not return the children to her at that location.

M.P. contends in a single sentence that reasonable efforts were not made to reunite her with her children. The record does not support her contention. The DHS offered M.P. extensive programming and regular visits with her children for almost two years—including a continuance of the termination proceedings so that she could find suitable housing after being released from the RCF. M.P. sabotaged her chances for reunification by twice violating the conditions of her probation. The State demonstrated reasonable efforts in this case as part of its overall proof that the children could not be safely returned to their mother’s care. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000).

In considering whether to terminate parental rights, our primary considerations are the children’s safety; their physical, mental, and emotional condition and needs; and the placement that best provides for their long-term nurturing and growth. Iowa Code § 232.116(2); see *P.L.*, 778 N.W.2d at 40

(holding “there is no all-encompassing best-interest standard to override the express terms of the statute”). In this case, continued placement with the foster family appears to best further those statutory goals. The witnesses all agreed that the children had bonded with their foster family and were stable in that placement. The foster family expressed a willingness to adopt the children and an openness to the children maintaining appropriate contact with their biological parents. The limbo of their current situation has taken a toll on the children. Their best interests are served by affirming the termination and allowing them a more settled future.

The State proved the grounds for termination in section 232.116(1); termination is in the children's best interests as set out in section 232.116(2); and no countervailing factors arise under section 232.116(3). We affirm.

AFFIRMED.